



**2.**  
**FACTUAL BACKGROUND**

2.1 Plaintiffs' First Amended Complaint (Dkt. No. 23) alleges the following causes of action against SMI and the other Defendants: 1) violations of the Texas Deceptive Trade Practices Act; 2) violations of the Texas Insurance Code; and 2) negligent misrepresentation.

2.2 Specifically, Plaintiffs allege that they purchased a flood policy for their residence in Galveston, located at 2705 Ave. O (the "Property"), based on a quote they received for an annual premium of \$430.00. That quote was based on the location of the Property "in a 'preferred flood zone,'" which has lower flood premiums than properties in areas that FEMA has identified as a higher flood risk.

2.3 Plaintiffs claim that they relied on the flood risk and premium information when they closed on the purchase of the Property. Plaintiffs allege that they were subsequently informed the premium was misquoted due to an error in describing the location of the Property in a "preferred zone." Instead, Plaintiffs allege, their flood policy premium was \$3,000 more than initially quoted.

2.4 On April 2, 2015, SMI provided a preferred flood non-binding quote to Plaintiffs for the Property with a one-year premium of \$430.00. This quote was based on information provided by Defendant LERETA, LLC regarding the flood zone for the Property. Defendant Wright uses LERETA, LLC for flood zone determinations.

2.5 LERETA, LLC provided a Standard Flood Hazard Determination Form, dated March 27, 2015, that identified Flood Zone X for the Property.

2.6 LERETA, LLC also provided SMI with a Standard Flood Hazard Determination Form dated July 6, 2015, that again identified Flood Zone X for Plaintiff's residence.

2.7 Plaintiffs' mortgage provider subsequently determined that the Property is located in Flood Zone AE, contrary to the information provided by LERETA, LLC.

### **3.**

#### **CROSS-CLAIM FOR CONTRIBUTION AGAINST LERETA, LLC AND WRIGHT NATIONAL FLOOD INSURANCE**

3.1 SMI incorporates by reference the allegations set forth above as if fully set forth herein.

3.2 Cross-Plaintiff SMI asserts a cross-claim for contribution against Defendants/Cross-Defendants LERETA, LLC and Wright National Flood Insurance.

3.3 SMI's Cross-Claim arises out of the same transaction or occurrence that is the subject matter of the original action herein. Cross-Defendants LERETA, LLC and Wright are liable to SMI for all or part of Plaintiffs' claims asserted against SMI in this lawsuit.

3.4 In the unlikely event SMI is found liable to Plaintiffs in any respect, SMI asserts the damages claimed by Plaintiffs were proximately caused by the acts or omissions of Cross-Defendants, who are in the business of identifying flood zone designations, writing and issuing flood insurance; and who actually misquoted the flood zone designation and placed the insurance policy based on the misquoted flood zone designation.

3.5 As such SMI is forced to file this Cross-Claim against LERETA, LLC and Wright. The damages sought are within the jurisdictional limits of this Court.

3.6 SMI requests that any damages awarded against it be reduced by the proportion of responsibility attributed to Cross-Defendants, Plaintiffs and any responsible third parties, pursuant to TEX. CIV. PRAC. & REM. CODE §§ 33.001, et seq.

**4.**  
**CROSS-CLAIM FOR NEGLIGENCE**  
**AND NEGLIGENT MISREPRESENTATION**  
**AGAINST LERETA, LLC AND WRIGHT NATIONAL FLOOD INSURANCE**

4.1 SMI incorporates by reference the allegations set forth above as if fully set forth herein.

4.2 SMI denies it committed any wrongful acts of negligent misrepresentation, violations of the Texas Deceptive Trade Practices Act, or violations of the Texas Insurance Code.

4.3 In the unlikely event that SMI is found liable to Plaintiffs, then SMI asserts Plaintiffs' damages, if any, are attributable to the negligence and negligent misrepresentation made by LERETA, LLC and/or Wright National Flood Insurance to Plaintiffs with respect to their identification of the wrong flood zone and placing a policy of flood insurance with the wrong flood zone for Plaintiffs' home.

**5.**  
**JURY DEMAND**

SMI demands a jury trial and will timely tender the jury fee.

WHEREFORE, PREMISES CONSIDERED, Defendant STGJ Enterprises, LLC d/b/a SMI Agency prays that it recover its damages against Cross-Defendants and for such further relief to which it may show itself justly entitled.

Respectfully Submitted,

ROYSTON, RAYZOR, VICKERY & WILLIAMS,  
L.L.P.

By: /s/ Scott R. Breitenwischer

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**ATTORNEYS FOR DEFENDANT/CROSS-  
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SMI AGENCY**

**CERTIFICATE OF SERVICE**

This will certify that a true and correct copy of the foregoing has been served on counsel for all parties via the Court's CM/ECF system on this 7th day of August 2017.

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